

E1-1828

SURF

2005 APR -8 P 9:53

Mayer, Brown, Rowe & Maw LLP  
1909 K Street, N.W.  
Washington, D.C. 20006-1101

Main Tel (202) 263-3000  
Main Fax (202) 263-3300  
www.mayerbrownrowe.com

April 8, 2005

Kathryn Kusske Floyd  
Direct Tel (202) 263-3223  
Direct Fax (202) 263-5223  
kkusskefloyd@mayerbrownrowe.com

VIA HAND DELIVERY

Ms. Victoria J. Rutson  
Chief, Section of Environmental Analysis  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423

Re: Finance Docket No. 34658, The Alaska Railroad Corp. -- Petition For Exemption From 49 U.S.C. §10901 To Construct and Operate a Rail Line Between Eielson Air Force Base (North Pole, Alaska) and Fort Greely (Delta Junction)

Dear Ms. Rutson:

As you are aware, The Alaska Railroad Corporation ("ARRC") issued an RFP soliciting bids for National Environmental Policy Act Studies and documentation services in connection with the planned northern rail line extension project between Eielson Air Force Base and Fort Greely. ARRC intends to utilize an independent third party consultant to assist the Surface Transportation Board ("STB") with the preparation of environmental documentation for the above-captioned proceeding. See 49 C.F.R. §1105.10(d). This contracting process by the applicant is envisioned by the Council on Environmental Quality guidance. See Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18,026 (March 23, 1981) ("Forty Questions"), Question 16 ("the applicant may undertake the necessary paperwork for the solicitation of a field of candidates under the agency's direction").

ARRC received bids on March 3, 2005 from three bidders. Since that time, ARRC's selection committee has been evaluating and scoring the proposals in accordance with the criteria specified in the RFP. As part of the process of evaluating the proposals, ARRC examined each bidder's experience and qualifications, including work on prior and ongoing projects. In addition, bidders' proposals were examined with respect to disclosures concerning whether they had any conflict of interest. Under applicable guidance, third party consultants must be able to specify in a disclosure statement that they have no financial or other interest in the outcome of the project. See 40 C.F.R. §1506.5(c) ("Contractors shall execute a disclosure statement

April 8, 2005

Page 2

prepared by the lead agency . . . specifying that they have no financial or other interest in the outcome of the project.”); Forty Questions 17(a) and (b); STB Policy Statement on Use of Third-Party Contracting in Preparation of Environmental Documentation, 66 Fed. Reg. 15,527 (March 19, 2001) (“STB Policy Statement”) (“SEA’s approval is subject to the contractor signing a disclosure statement that it has no financial interest in the outcome of the applicant’s proposal.”).

One bidder’s proposal identified an ongoing contract with the Department of Defense Missile Defense Agency (“MDA”). The details of that engagement are described in the attached letter. This bidder, ICF Consulting, has indicated that it does not have any financial or other interest in the outcome of the rail line extension project and is prepared to execute the required disclosure statement. Based upon the information contained in the ICF letter and applicable guidance, it does not appear that ICF has a conflict of interest. In addition, as detailed in ICF’s letter, it has volunteered to establish a formal screen whereby no ICF staff working on the environmental documentation for this rail line extension project would work on the MDA contract, or vice versa. The parameters of the proposed screen are provided in the attachment.

Under applicable CEQ and STB authorities and guidance, the independent third party consultant is to be chosen solely by the lead agency where an environmental impact statement is being prepared. See, e.g., 40 C.F.R. 1506.5 (c); Forty Questions 16 (the agency “must select the consulting firm, even though the applicant pays for the cost of preparing the EIS”); and STB Policy Statement. We would appreciate hearing your views on this issue.

Sincerely,

Kathryn Kusske Floyd / JAM

Kathryn Kusske Floyd

Attachment

cc: David Navecky  
Eileen Reilly  
Brett Flint



April 7, 2005

Mr. C. Lee Thompson  
Alaska Railroad Corporation  
Contracts  
327 Ship Creek Avenue, Second Floor  
Anchorage, AK 99501

Re: Request for Proposal (RFP) for the National Environmental Policy Act (NEPA) Studies and Documentation Services for the Alaska Railroad Corporation (ARRC) Northern Rail Extension Project

Dear Mr. Thompson:

As you know, we submitted a bid on March 3, 2005, in response to the RFP from ARRC to provide NEPA studies and documentation services for ARRC's Northern Rail Extension Project. As part of our response on relevant experience, ICF identified its contract to provide Environmental, Safety, and Occupational Health (ESOH) support to the Department of Defense's Missile Defense Agency (MDA). Under that contract, ICF develops strategies and actions for compliance with federal laws pertaining to overall ESOH compliance, NEPA, safety and health, hazardous materials management, pollution prevention, explosive safety, and weapon systems acquisitions. Regarding NEPA in particular, ICF develops and executes NEPA compliance strategies for MDA, prepares and reviews environmental documents for planned missile defense system tests, develops mitigation monitoring plans and overall ESOH policy guidance, and provides technical assistance in implementing NEPA and related environmental statutes and regulations for MDA actions in the United States and abroad. ICF further notes that all staff working on the MDA contract are required to have security clearances and must maintain strict confidentiality of the information related to that contract consistent with Department of Defense requirements.

As required by the Council on Environmental Quality regulations (40 C.F.R. § 1506.5 (c)) and Surface Transportation Board (STB) practice, ICF is prepared to execute a disclosure statement specifying that ICF has no financial or other interest in the outcome of ARRC's Rail Extension Project. Moreover, ICF's contract with MDA does not affect its ability to execute the required disclosure.

Even though there is no conflict of interest under relevant legal guidance and authorities for ICF to serve as both the contractor to MDA under the above-described contract and as third party consultant to the STB in connection with ARRC's Rail Extension Project, ICF voluntarily offers to avoid even the possible appearance of a conflict by insulating its staff on the Rail Extension Project by establishing a formal screen. The steps ICF would take to institute a formal screen are as follows.

- ICF will establish a formal screen so that there will be no involvement of ICF's MDA project staff with ICF's staff Rail Extension staff. To institute this screen, ICF will identify those staff members of ICF who are working on the MDA contract (hereinafter identified as "Team A"). Team A individuals will not be allowed to work on the Rail Extension Project and shall have no conversations, exchange of documents, or communications of any kind (except publicly available information) about their MDA work with any member of the Rail Extension Project team (except that Team A, if requested by MDA, will be allowed to provide only factual information on MDA activities for transmittal to STB as part of the proceeding). Conversely, those staff members of ICF supporting the Rail Extension Project (hereinafter identified as "Team B") will not be allowed to support the MDA project and shall have no conversations, exchange of documents, or communications of any kind (except publicly available information) about the Rail Extension Project with any member of Team A. This formal screen shall terminate at the conclusion of the STB's proceeding for ARRC's Rail Extension Project, including any appeals, or at the conclusion of ICF's contract with MDA, whichever occurs first.
- Every staff member who works on Team A and B will be required to sign a confidentiality agreement whereby they pledge not to break the rules of the formal screen. Penalties for noncompliance with the confidentiality agreements for all ICF staff working on Team A and B will include disciplinary action up to and including termination.

We look forward to receiving your comments on this proposal. You can reach me directly at (703) 934-3283 and [swyngarden@icfconsulting.com](mailto:swyngarden@icfconsulting.com)

Sincerely,

A handwritten signature in black ink that reads "Steve Wyngarden". The signature is written in a cursive, flowing style.

Steve Wyngarden  
Senior Vice President